

Interim ICS Rate Caps**Comments from Parties to the Proceeding****CenturyLink:**

6.05 CenturyLink did not oppose the rate caps originally proposed in the October 2013 Order, other than to request that existing contracts be grandfathered. However, in the Further Order, the Commission now proposes not only the initial rate caps, but declining rates caps effective on the first and second anniversary of the implementation of the Order. (§6.23). These declining rate caps were not mentioned in the October 2013 Order and, therefore, were not addressed in CenturyLink's prior comments. Further, CenturyLink is unclear as to the record basis for this new proposal. CenturyLink does not believe any information has been provided that would support these declining rate reductions and requests the Commission to reject them. Instead, the Commission should leave the caps at the original \$0.25 rate that was proposed in the October 2013 Order.²⁴

GTL:

6.06 In support of its proposed rates, the Commission relies on the FCC ICS Order and FNPRM, which adopted cost-based ICS rates.²⁵

As GTL noted in its December 6 Comments, the Commission's proposed rate caps are irrationally low when compared to non-inmate, intrastate collect calling offered to the general public in Alabama. While the Commission claims this comparison is meaningless because those providers are no longer regulated by the Commission, the record demonstrates that Alabama carriers are charging rates for non-inmate intrastate collect calling well above the rate caps proposed by the Commission for ICS. These non-inmate collect calling services require no integrated security functionality, but are priced significantly higher than what the Commission has proposed for inmates who make the same type of calls with integrated security features that are an essential element of ICS. The Commission's proposed rate caps ignore the security costs inherent in ICS rates.²⁶

²⁴ CenturyLink Comments, pages 14-15.

²⁵ GTL Comments, page 3.

²⁶ GTL Comments, pages 4-5.

Moreover, the Commission provides no justification to support the setting of rates for prepaid/debit calls lower than the rates for automated collect calls.²⁷

Securus:

6.07

The interim rate caps are unlawful, unreasonable and confiscatory. Unless the Commission clearly mandates that site commissions or similar payments are prohibited, the proposed ICS rate caps will be below Securus' costs at all confinement facilities where such payments are required. Securus fully understands the need for confinement facilities to have sources of revenue to pay for vital programs. Securus does not object to the payment of site commissions if, and only if, the proposed rate caps are adjusted upward to recover these additional commission payment costs. If the Commission wishes to follow the lead of the FCC, when the low proposed intrastate rate caps are implemented, the payment of site commissions must be simultaneously eliminated. If the Commission does not wish to mandate the elimination of site Commissions, it must raise the proposed rate cap by an amount that will allow the ICS provider to recover all its costs PLUS any allowed site commission payment. But to permit site commissions while slashing rates will make it impossible for ICS carriers to provide service in Alabama. In many cases, the proposed ICS rate caps will be below Securus costs even if the Commission prohibits the payment of site commissions or similar payments.²⁸

- 6.08 CenturyLink's observation that the Commission revised its recommended rate caps for prisons in the July 7, 2014 Further Order is accurate. For October 7, 2013 Order in this proceeding, the recommendation was to apply the same rates for both prisons and jails. The Commission Order was approved by the Commission on October 1, 2013 and a substitute Order was released on October 7 to correct the errata for the earlier Order. The FCC ICS Reform Order was released just 4 days prior to release of the Commission's Order. Thereafter, upon thorough review of the FCC Order, the Commission revised its recommended rate caps for prisons. We addressed the issue of rates for prisons versus jails in ¶ 6.06 of the Order.

In response to the FCC's 2012 ICS NPRM, CenturyLink did not file a cost study but "...did file summary cost information for its ICS operations. Specifically, CenturyLink reported that its per

²⁷ GTL Comments, page 5.

²⁸ Securus Comments, pages 6-7.

minute costs to serve state departments of corrections facilities (excluding site commission payments) averaged \$0.116 and that its per-minute costs to serve county correctional facilities (excluding sit commission payments) averaged \$0.137". CenturyLink indicates that the state departments of corrections facilities it serves produced a median per-minute cost of \$0.108, a low per-minute cost of \$0.058 and high per-minute cost of \$0.188. Pay Tel serves only jails. The cost data Pay Tel submitted to the FCC supports "...average total costs for collect and debit per-minute calling of approximately \$0.23 and \$0.21, respectively, (including the cost of an advanced security feature known as continuous voice biometric identification)." Therefore, the record suggests a lower interim rate cap is appropriate for prisons.²⁹

Therefore, the Commission revised its targeted rate cap for prisons to match the FCC's interim rate caps of \$0.25/min (collect) and \$0.21/min (debit and prepaid). The targeted rate cap for jails is unchanged from the October 2013 Order: \$0.25/min (collect, debit and prepaid).

- 6.09 The FCC ICS Order and FNPRM, adopted safe harbor rates of \$0.14/min (collect) and \$0.12/min (debit and prepaid) and the interim rate caps of \$0.25/min (collect) and \$0.21/min (debit and prepaid). The FCC affirms that the interim rate caps, upon which the Commission's rate caps are predicated, are not a cost based finding.

We adopt interim rate caps to place an upper limit on rates providers may charge for interstate ICS. As explained below, the interim rate caps we establish are \$0.21 per minute for debit and prepaid interstate calls and \$0.25 per minute for collect interstate calls. We adopt the interim rate caps to provide immediate relief to consumers. As of the effective date of this Order (90 days after Federal Register publication), providers' rates for interstate ICS must be at or below these levels.³⁰

We believe that the rate caps we establish here are set at sufficiently conservative levels to account for all costs ICS providers will incur in providing ICS pending our further examination of such costs through the accompanying FNPRM and data collection. The interim rate caps we establish are not a finding of cost-based ICS rates because we use the highest costs in the record, which include the costs of advanced ICS security features,

²⁹ Order ¶ 6.06.

³⁰ FCC ICS Order, ¶ 73.

to set an upper bound for interstate rates that will be subject to cost justification.³¹

- 6.10 Responding to the Petition for Review of the FCC's ICS Order filed in the in the United States Court Of Appeals for the District of Columbia Circuit filed by Securus, the FCC's brief³² argued that it reasonably concluded that most inmate calling providers can recover their costs within uniformly applicable hard caps. On January 13, 2014, the appellate court ruled on Securus' motion for a stay of the FCC's order, granting the motion in part and denying it in part. As a result, several key provisions of the order were placed on hold pending the outcome of Securus' lawsuit including the proposed safe harbor rates. The FCC's interim rate caps (\$0.25 per minute for collect calls and \$0.21 per minute for debit and prepaid calls) were not stayed and went into effect on February 11, 2014. Therefore, GTL's claim "In support of its proposed rates, the Commission relies on the FCC ICS Order and FNPRM, which adopted cost-based ICS rates" is misleading and inaccurate. The Commission does not adopt the cost-based safe harbor rates stayed by the DC Appellate Court. The Commission adopts the FCC interim rate caps for prisons. For jails, the Commission adopts rate caps that exceed those adopted by the FCC in that the rate for all calls is \$0.25/min. Additionally, the rates for both prisons and jails will be phased in over a two-year period.
- 6.11 GTL seeks to demonstrate equivalency between ICS services and unregulated toll services provided by carriers using the Public Telephone Switched Network ("PTSN"). Collect calling over the PTSN is an infrequently used service that is experiencing rapid displacement by cellular phones and prepaid calling cards. With declining use, the costs associated with providing the service must be recovered from an ever decreasing number of calls thereby exerting upward pressure on prices. By contrast, all inmate calls must be completed via automated collect. There are no equivalent delivery means competing with and displacing automated collect inmate calls and the service is not in decline.

³¹ FCC ICS Order, ¶ 74.

³² RE: Securus Technologies, Inc., et al., Petitioners, V. Federal Communications Commission and United States of America, Respondents, Brief for the Federal Communications Commission in the United States Court of Appeals for the District Of Columbia Circuit, USCA Case #13-1280, Document #1503814, Filed: 07/21/2014.

- 6.12 A better comparison with service offered by the ICS provider is domestic prepaid calling card service. AT&T's prepaid calling card rates in Alabama range from \$0.04/min to \$0.07/min when purchased directly from AT&T. Rechargeable AT&T calling cards, with per-minute rates of \$0.035/min in the lower 48 states, may be purchased at any Walmart. Users call a central number provided on the card which routes the caller to an automated system where, using IVR prompts, the user must enter the personal identification number (PIN) associated with the card and the called number from their keypad. Similarly, inmates place debit calls by dialing into a central number where they enter their PIN.
- 6.13 Prepaid calling card service has similarities with ICS absent the inmate security features. Of course, retail prepaid calling card service is not equivalent to ICS but the comparison is no more meaningless than GTL's cherry-picked comparisons with unregulated, collect call offerings. Moreover, GTL's ancillary fees, which comprise part of the total price for ICS, must be allocated to the charges for GTL's inmate calls before making the otherwise meaningless price comparison with non-inmate services. ICS is a unique service provided in a unique environment for which there is no comparable counterparts offered by carriers over the PTSN.
- 6.14 GTL contends that the Commission's proposed rate caps ignore the security costs inherent in ICS rates. However, the FCC's interim rate caps, upon which the Commission's rate caps are based, include an allowance of \$0.017/min (collect) and \$0.016/min (debit and prepaid) to recover the cost of providing continuous voice biometrics. Therefore, GTL is mistaken that the Commission's proposed rate caps ignore security costs. The Commission seeks affirmation from GTL that it is indeed providing the continuous voice biometrics in Alabama confinement facilities from which it is currently being compensated via interstate rates and for which it will receive similar compensation under our intrastate rate caps.
- 6.15 GTL comments "the Commission provides no justification to support the setting of rates for prepaid/debit calls lower than the rates for automated collect calls." GTL's comments are accurate. The Commission omitted justification for higher sent-collect rates because

the reasons for doing so are universally accepted and understood by the industry and by regulators. The rate differential is fully supported by cost data. Ironically, it was a representative of GTL that first made a presentation to Commission staff during the transition from purely sent-collect service to prepaid service. GTL's reason for moving to prepaid service was to avoid the expense associated with charges billed by other carriers that are subsequently disputed by customers or are otherwise uncollectable. The FCC notes in ¶ 22 of its ICS order that providers cite billing and collection as justification for higher collect call costs (see also ¶ 75).

- 6.16 The FCC's interim rate caps, upon which the Commission's rates are based, were established using Pay Tel's cost study and 2008 cost data submitted by ICS providers (see FCC ICS Order, para. 76-80). The data indicates higher average costs for collect calls. Consequently, the FCC adopted interstate rate caps of \$0.25/min (collect) and \$0.21/min (debit and prepaid). The Commission's targeted rate caps for prisons mirror the FCC's interim rate caps. The targeted rate cap for jails is \$0.25/min for collect, debit and prepaid calls in recognition of what the Commission believes are higher costs for jails. We note that GTL serves only jails in Alabama.
- 6.17 Securus claims that unless the Commission mandates elimination of site commissions or similar payments, the proposed ICS rate caps will be below Securus' costs at all confinement facilities where such payments are required. The Commission's regulatory obligation is to ensure that ICS rates and charges are just and reasonable. The authority to prohibit intrastate site commissions in Alabama rests with the Alabama Legislature rather than with regulators at either the state or federal level. In those states where intrastate site commissions are prohibited, it is the legislatures in those states that took the action. Therefore, Securus should address its plea for site commission elimination to the Alabama Legislature.
- 6.18 The payment of site commissions is not required by the Commission or by Alabama law. Securus and other ICS providers may offer them or choose not to do so. Our jurisdiction is limited to ensuring provider compliance with our prescribed rates, fees, and other requirements for the provision of ICS. Thereafter, any site commission payments offered

by providers have no bearing upon the prices inmates and their families pay for ICS. Securus and most other providers include a “force majeure” clause in their contracts with facilities that allow them to renegotiate or terminate the contract based on changes imposed by regulators. Neither Securus nor any other ICS provider is compelled to provide intrastate ICS in Alabama. If any providers are unable to compete profitably, based on the rates and fees prescribed by the Commission, they may freely elect to exit the ICS market in this state.

- 6.19 Securus’ claim that the interim rate caps are unlawful, unreasonable and confiscatory is contradicted by data submitted to the Commission by parties to this proceeding. Based on calendar year 2012 calls and revenue data submitted in response to a January 2013 staff data request, the average ICS call revenue in Alabama was \$0.27/minute. The average revenue for toll calls (17.4% of all calls) was \$0.46/min and the average revenue for local calls (82.6% of all calls) was \$0.22/min. The difference in revenue between local and toll calls is explained by the existing \$2.75 cap on local calls. Both the operator surcharge and the local call cap are removed under the rates proposed in this Order. Therefore, the average revenue per call for jails will be \$0.30/min in year 1, \$0.28/min in year 2, and \$0.25/min beginning in year 3. The Commission’s recommendations can in no way be construed as “slashing rates”, the hyperbole used by Securus in its comments to describe our proposed rate caps. Compared to the \$0.27/min average revenue realized in 2012, the rate caps we adopt are neither unreasonable nor confiscatory and are certainly not unlawful.
- 6.20 One of the largest jails in Alabama, the Shelby County Jail (located near Birmingham), voluntarily adopted the Commission’s targeted intrastate rates for prisons, \$0.25/min and \$0.21/min on October 1, 2014; a full two years before the rates are applicable in Alabama prisons. We note that the Commission’s targeted rate cap for jails is \$0.25/min for collect, debit and prepaid calls and that Shelby County adopted the lower prison rates. NCIC, the ICS provider serving the Shelby County Jail, reports a comparison of the usage between September and October indicates calls have increased by 27% and that revenue is virtually unchanged. NCIC also reports paying reasonable site commissions to the Shelby

County Jail. Consequently, the Commission rejects Securus' claim that the concomitant payment of site commissions under our rate caps, which we have no authority to require nor preclude, make it impossible for ICS carriers to provide service under the rate structure the Commission adopts.

- 6.21 The FCC authorizes ICS providers the flexibility to impute a 15-minute minimum call allowance for interstate calls thereby charging for 15 minutes usage regardless of whether the inmate talks for 1 minute or 15 minutes.³³ Thus, an interstate prepaid or debit call is priced at \$3.15 (15 min @\$0.21/min) when it is dialed by those providers that exercise the flexibility granted by the FCC. One of the advantages of implementing a postalized³⁴ rate and charging based on actual usage is avoidance of the administrative and economic implications associated with dropped calls, which despite assurances³⁵ to the contrary given to the FCC staff, is a significant issue in jails and prisons and a frequent source of complaints from inmates and those they call. Flat-rated call pricing creates an incentive for disconnecting calls based on suspected "three-way call" violations which must be re-dialed by the inmate incurring an additional flat-rated, 15-minute charge. Charging a per-minute rate based on actual usage eliminates dropped call issues. Moreover, with flat-rated call pricing, ICS providers dictate the inmate's call time. An inmate call that requires only 3 minutes of conversation time is charged for the full 15 minutes. The Commission does not authorize such pricing flexibility for intrastate ICS calls in Alabama.
- 6.22 The FCC released an FNPRM on October 22, 2014 for WC Docket 12-375 (Inmate Calling Services). The rate caps adopted herein, including the phase down period to the target rates, are subject to change pursuant to any pending FCC rulings that impact intrastate rates and site commissions.

³³ See FCC ICS Order, ¶ 63, and 88-89. See also Securus letter to Julie Veach, Chief, Wireline Competition Bureau, Re: WC Docket No. 12-375, Rates for Interstate Inmate Calling Services, dated February 10, 2014 and Securus Notice of Ex Parte WC Docket No. 12-375, dated February 27, 2014.

³⁴ By "postalized" we mean pricing based only on a per-minute rate without an up-front call set-up charge; i.e. without an operator surcharge component.

³⁵ Securus Notice of Ex Parte WC Docket No. 12-375, dated February 27, 2014, page 2.

Single Payment Services**Comments from Parties to the Proceeding****GTL:**

6.23

These services are offered as a “convenience” to a customer who may not want to establish a prepaid ICS account, or may have no other way to accept a collect call from an inmate. ICS providers do not offer consumers the ability to use these services in order to “circumvent” ICS rate caps. Rather, these services give the consumer additional options for receiving and paying for inmate initiated calls. The concept of paying more for a service or product for the convenience of using a preferred billing method is not unique to ICS.

Many of these charges imposed for single payment services are not established or billed by the ICS provider. They are established and imposed by wireless providers or payment processing companies over which the Commission does not have jurisdiction. Single payment services also are not required to be tarified. ICS providers are subject to the tariffing requirements of the Alabama Code, which requires a utility to file a tariff “[w]henver a utility desires to put in operation a new rate or service regulation.” The rates and service regulations for single payment services are not established by ICS providers; the wireless carrier or the entity providing the third-party payment processing service dictates the “rate or service regulation” for single payment services. The ICS provider does not control the “rates and service regulations” for single payment services, and therefore has no responsibility to place those services or rates in its tariffs.

Finally, the Commission cannot dictate the content of the script used to explain single payment services to customers or how the charges for single payment services are reflected on a customer’s mobile phone bills and/or credit card statements. ICS providers are not responsible for the scripts used by third-party payment processing services, and have no say in how the charge appears on a consumer’s mobile phone bill or credit card statement. Those matters are determined based on the contractual agreement between the third-party payment processing service and the wireless carrier or credit card company. GTL agrees to inform its customers about all of the payment options available to the customer, including those that do not include an additional charge, but GTL cannot control the actions of third-party payment processing providers.³⁶

³⁶ GTL Comments, pages 12-14.

Securus:

6.24

The Order caps rates for "single payment service" calls at the new rate set for a collect call that is 12 minutes in duration. This action exceeds the Commission's jurisdiction and, even if an ICS provider could effectuate this rate, would preclude the ICS provider's recovery of its cost of service.

In addition to Securus' previous comments acknowledged by the Commission in the Order, Securus reminds the Commission that Securus itself does not provide the third-party call processing Text2Connect or Pay Now services. Instead, such services are provided by 3CInteractive ("3CI"). 3CI is a billing entity that is not regulated by the Commission. The Text2Connect and PayNow services are simply "optional" services that any customer can opt to receive or to reject. Alternatively, a customer can receive inmate calls at Securus' published rates without incurring any fees associated with the use of the Text2Connect or Pay Now services.

With the Order, the Commission is attempting to interfere with the contracts of outside vendors like 3CI over which the Commission possesses no jurisdiction in much the same way as if the Commission sought to exercise jurisdiction over third-party computer companies, equipment suppliers, accounting firms or printing services which impact the cost of the ICS provided by Securus but over which the Commission has or exerts no jurisdiction. If the Commission overreaches to exert jurisdiction in this manner, the inmates and their families may end up with fewer payment options available as providers like Securus may no longer offer such services.

In addition, applying the collect call cap to single payment services would be illegal and confiscatory because it would impose below-cost rates. Securus incurs charges from third parties like 3CI in order to give inmates new and valuable calling options. The collect call cap (for a 12- minute call) is far lower than the cost that Securus must pay to the vendor. As such, the rate is unreasonable and contrary to law.³⁷

CenturyLink:

6.25

In the Further Order, the Commission reverses and revises the October 2013 Order as it relates to certain "single-payment" fees, including "text-connect" and "pay-now" fees. (¶¶ 6.42, 6.43). CenturyLink objects to the Commission's determination that these

³⁷ Securus Comments, pages 7-8.

types of fees are permissible. CenturyLink believes such a decision has the potential to completely undermine what the Further Order otherwise seeks to accomplish through its caps on rates and caps or prohibitions on other fees and surcharges.

For example, allowing these single-payment charges circumvents the purpose of the initial free call, which CenturyLink understands to be the opportunity to provide consumers sufficient up-front information to allow them to choose the most cost-effective payment and funding mechanisms for their needs. Single payment charges also preclude the opportunity for consumers to spread capped transaction fees over the cost of multiple calls, effectively making the maximum funding amount for single-pay services equal to the cost of a 12-minute phone call, rather than the \$100 mandated for all other calls.

The Further Order attempts to minimize the inconsistency of allowing single-call surcharges by limiting the allowable charges to reflect the rate and fee caps applicable to comparable non-single payment services and by requiring single-payment providers to prominently disclose charges and the availability of other payment mechanisms. (§ 6.43). Despite these restrictions, CenturyLink believes the implementation of these charges will be almost impossible for the Commission to police. Therefore, CenturyLink believes that the Commission should prohibit them entirely, since several other, more reasonably priced and more easily enforceable, payment methodologies are available.

If the Commission continues to believe it is in the public interest to allow these single pay services, then they must be charged in a method consistent with other calls: (1) they must be charged only through per minute charges, not per-call surcharges and (2) the assessed transaction fee must be "pro-rated" over at least a \$50 funding event, noting that mandated prepaid account funding maximums are set at \$100. A per minute rate would be far more consistent with the stated purpose of the rate and fee caps and surcharge prohibitions otherwise adopted in the Further Order.³⁸

Commission Response

- 6.26 Single payment services such as Pay Now and Text2Collect provide one means of completing sent-collect inmate calls to wireless recipients whose carriers do not accept

³⁸ CenturyLink Comments, pages 15-16.

collect calls. Inmates originate the calls over the provider's instruments and telecommunications facilities. At the provider's switch, the provider may access a database that is used to determine the identity of the provider serving the dialed number and whether that provider is a wireless carrier. The provider also has the capability from the database of determining whether the call recipient's phone is enabled for SMS (short message service) more commonly referred to as premium text messaging. The provider routes the call to the call recipient who is advised, via an automated message that the inmate is attempting to call them collect. The call recipient is provided information about charging the single call to their wireless account or an opportunity to reject the call. A number is associated with each option and the called recipient indicates their preference by pressing the number on the keypad corresponding to their preference. ICS providers typically do not have agreements with wireless providers which allow them to charge collect calls directly to the recipient's wireless carrier bill. Therefore, they contract with third-party services that have established collect billing arrangements with wireless carriers for that capability.

- 6.27 There are several such third-party vendors including 3Cinteractive ("3CI") and Bill to Mobile. These third-party providers are necessary only after the call recipient is reasonably informed of their payment options, including the establishment of prepaid service, and thereafter choose to have the call billed to their wireless carrier account. Once the call is complete, the call recipient receives a premium text message confirming that the charge that will be added to their wireless phone bill. Securus and GTL³⁹ use 3CI to process single payment calls billed to the recipient's wireless account. Securus' service is branded "Text2Connect" while GTL's service is branded "Collect2Phone". Providers that offer single payment calls typically do not charge in accordance with the actual duration of the call. Instead, they authorize a maximum usage allowance (typically, 15 or 20 minutes) for one price. The ICS provider may or may not offer the call recipient an opportunity, up front, to establish a prepaid account. If the called party is offered that

³⁹ Telmate also offers single payment services which in other locales are branded "Telmate Mobile Pay" and "QuickConnect". The prices for these services are currently undisclosed but copies of RFPs for Oregon show the commission paid to facilities for QuickConnect (credit card single payment service) is the same as Securus' Pay Now and GTL's Collect2Card.

opportunity and chooses to establish a prepaid account with the provider, the call is routed to the provider's call center where a prepaid account can be established using a credit card while the inmate remains on hold.

- 6.28 For single payment calls to a credit card, Securus and GTL inexplicably bypass their own call centers and route such calls to 3CI. Securus' single payment service by credit card is branded "Pay Now" and GTL's product is branded "Collect2Card". However, it is unnecessary for either provider to use a third-party service for processing a credit card payment when both providers routinely process credit card payments at their own call center. If a prepaid account can be established with a credit card when such calls are routed to the provider's call center, a single payment call can likewise be charged to a credit card at the provider's call center. NCIC now offers "Bank Card Collect" service from its call center. The maximum duration of the call is 15 minutes rated at the regulated collect call rate for the facility. Currently, NCIC is not assessing a credit card payment fee to the call charge.
- 6.29 Securus, GTL, and Telmate failed to seek Commission approval to offer single payment collect calls in Alabama. Moreover, they failed to disclose to the Commission that such services are being offered. From the Commission's rules for Inmate Phone Service:

All IPS providers must file tariffs with the Commission which set forth the services provided along with the charges and surcharges for those services. Tariffs shall also identify the billing and collection methods utilized by the IPS provider; such as LEC or direct billed collect, prepaid calling card, debit account, prepaid collect account and any other payment alternatives.⁴⁰

The operator service and per-minute rates charged the customer for any local (intraLATA/interLATA) collect call shall not exceed the currently effective caps ordered by the Commission.⁴¹

- 6.30 The price charged by Securus and GTL for Pay Now and Collect2Card, respectively, is

⁴⁰ APSC Telephone Rules, T-15.1(A)(2) approved by the Commission on March 3, 2009.

⁴¹ APSC Telephone Rules, T-15.1(B)(4) approved by the Commission on March 3, 2009.

\$14.99 which equates to an effective collect call rate of \$1.00/min for a 15-minute call. The price charged for Text2Connect and Collect2Phone is \$9.99 which equates to \$0.67/min for a 15-minute call. Those charges far exceed the Commission's rate caps approved in 2009 and our collect call rate caps in this Order. In ¶ 6.34 of our July Order for this proceeding, we concluded that single payment services allow for de facto circumvention of the Commission's capped ICS rates. Furthermore, ICS providers are shielding single payment service revenues from the Commission's inspection and supervision fees ("I&S fees") and may be shielding charges for single payment calls from the Alabama Utility Gross Receipts Tax. I&S fees and the Alabama Utility Gross Receipts Tax are applicable to other intrastate ICS.

- 6.31 Many providers offer a brief period of free talk time for the initial inmate collect call to a number served by a carrier that does not bill for inmate collect calls. After the brief period of free time, the call is redirected to the ICS provider's call center where a prepaid account may be established or the call recipient is provided with a toll-free number to call and establish a prepaid account. GTL provides this option in other states. The following from the website⁴² of a New York jail served by GTL, is one such example:

Free Chat™ Feature

A first-time called-party can use the Free Chat™ feature with the inmate before the party is prompted to setup an ADVANCEPAY® account. The Free Chat™ service is provided only once per destination number. The automated operator's opening message to the first-time called-party includes the standard branding announcement (that informs the party that the call is from an inmate at the correctional facility, naming both the inmate and the facility, and that the call may be monitored and recorded). Prior to being prompted to accept or reject that call, the party is informed that collect calls are not permitted to that number and the Free Chat™ and ADVANCEPAY® options are explained.

If the party accepts the call, GTL makes the final connection so the inmate and called-party can talk. After using Free Chat™, the automated operator breaks into the call and begins the set-up process for establishing an ADVANCEPAY® account so customers can accept future calls.

⁴² URL: <http://www.co.jefferson.ny.us/index.aspx?page=324>

How Does It Work?

ADVANCEPAY® allows inmates to call your number without the restrictions of standard billing. When an inmate attempts to make a collect call to you and your number cannot accept collect call billing, the ADVANCEPAY® automated operator will provide you with the option of setting up a prepaid account with a Visa or MasterCard payment of either \$25 or \$50. If you do so at this time, you will be re-connected to the inmate and the cost of this call will be deducted from your newly established ADVANCEPAY® account. If you cannot establish an ADVANCEPAY® account at that time, the inmate will be disconnected and you can call 1-800-483-8314 to establish an ADVANCEPAY® account at a later time.

Securus and GTL can offer the same alternative call processing and billing for inmate collect calls to wireless recipients from Alabama confinement facilities but elect not to do so without explanation.

- 6.32 Securus and GTL claim their single payment offerings are convenient and optional. However, a service is optional only to the extent that the call recipient is reasonably aware of their alternatives. As indicated in their comments “[GTL] agrees to inform its customers about all of the payment options available to the customer, including those that do not include an additional charge...” However, when and how such information is positioned within the call script provided to the call recipient is critical. Based on Commission test calls, call scripts used by Securus and GTL make no mention of lower priced prepaid service unless the consumer first rejects the provider’s single payment service offering and then only after a pause. Call scripts structured in such a way are misleading and deceptive. They create the misconception that the consumer’s only options are to either accept the inmate’s call at the provider’s single payment service price or reject the inmate’s collect call.
- 6.33 Consumers that accept a Securus Pay Now call are provided a web address beneath the \$14.99 charge on their credit card statement that directs them to a separate website⁴³ from the one⁴⁴ wherein Securus’ AdvanceConnect prepaid service is described. The 1tel.com website for Pay Now does not provide a link to Securus’ website so that customers

⁴³ See URL: <http://www.1tel.com/>

⁴⁴ See URL: <https://securustech.net/phone-services>

charged for Pay Now are informed of the alternative lower priced prepaid service. Moreover, the website makes no mention of Securus AdvanceConnect or any other Securus service other than Pay Now. Similarly, consumers that accept GTL Collect2Card service are directed to a separate website⁴⁵ from the one⁴⁶ wherein GTL's "Friends and Family" services are described. The 2fon.net website for Collect2Card does not include a link to GTL's website nor does it mention any GTL service other than Collect2Card. The same is true for GTL's Collect2Phone single payment service.⁴⁷ Therefore, GTL's claim that it agrees to inform its customers about all of the payment options available to them does not ring true.

- 6.34 Securus, GTL, and Telmate, collectively, submitted what is referred to as a consensus proposal⁴⁸ for the FCC's ICS proceeding. The Proposal includes the following recommendations for both interstate and intrastate ICS:

The following conditions should be required to be satisfied for an ICS provider to impose a premium payment fee on a customer:

- The ICS provider shall provide the customer an option to pay for an inmate-initiated call without incurring a payment processing fee, such as mailed payment by check or money order.
- The ICS provider shall fully inform customers of all payment methods available (including the no-charge option), the payment processing charges associated with each payment method, and the estimated time required to establish service applicable to each payment option.
- The ICS provider shall clearly and conspicuously identify the required information. The information should be presented clearly and prominently so that it is actually noticed and understood by the customer.
 - The ICS provider shall provide a brief, clear, non-

⁴⁵ See URL: <http://www.2fon.net/>

⁴⁶ See URL: <http://www.gtl.net/friends-and-family-information/>

⁴⁷ See URL: <http://www.collect2phone.com/>

⁴⁸ Letter to Commissioners Wheeler, Clyburn, Rosenworcel, Pai, and O'Rielly, dated September 15, 2014, RE: WC Docket No. 12-375, from Richard A. Smith, Chief Executive Officer, Securus Technologies, Inc., Brian D. Oliver, Chief Executive Officer Global Tel*Link Corporation, and Kevin O'Neil, President, Telmate, LLC (the "Proposal")

misleading, plain language description of the required information. The description must be sufficiently clear in presentation and specific enough in content so that the customer can accurately assess each of the available payment methods.

- An ICS provider shall clearly and conspicuously disclose any information the customer may need to make inquiries about the available payment methods, such as a toll-free number, e-mail address, or web site address by which customers may inquire or dispute any charges. An ICS provider shall include any restrictions or limitations applicable to each payment method available.⁴⁹

6.35 The Commission agrees with Securus, GTL, and Telmate that ICS providers should be required to be satisfy those conditions before imposing a premium payment [single payment service] fee on a customer. If wireless recipients of inmate collect calls are offered the provider's much lower priced prepaid alternatives up front, or if the single payment calls charged to credit cards are processed at the provider's call center using lower priced regulated rates and approved payment processing fees, we believe that many customers will choose the lower priced options. However, such calls would then be revenue reportable to the facility served by the provider and, as such, are subject to contractual site commissions. Consequently, we conclude that single payment services may be purposely diverted to third-party payment processors where exorbitant unregulated rates are charged by the provider and the revenues associated therewith are purposely concealed not only from regulators but from the facility served by the provider.

6.36 The Commission obtained access to the site commission report at a medium-size county jail in Alabama served by Securus. The data from the months of February and March 2014 and the analysis thereof is shown in Appendix A, attached hereto. The provider reports calls, usage minutes, and revenue for inmate debit, prepaid, and collect calls but reports to the facility only the number of Pay Now and Text2Connect calls originating from the facility. Our observations are as follows:

- The provider reported 5,405 calls (line 22), 66,983 minutes (line 26), and \$15,972

⁴⁹ Proposal, page 6.

of revenue (line 10) for inmate debit, prepaid, and collect calls from the facility.

- The provider reported 906 Pay Now and Text2Connect calls to the facility (line 23).
 - Based on the charges for Pay Now and Text2Connect and a 15-minute maximum call allowance⁵⁰, 13,590 minutes (line 27) and \$11,506 in revenue (line 13) from Pay Now and Text2Connect calls were not reported to the jail.
- The provider collected \$27,478 in revenue from inmate calls originating at the facility (line 16) but reported only \$15,972 in revenue to the jail (line 10).
- The jail was paid a commission of 54.1% on the reported inmate call revenue (line 12) but the provider paid a commission of just 7.9% on unreported revenue (line 15).
- Therefore, the effective commission paid to the jail was 34.8% of the actual inmate call revenue collected by the provider (line 18) which is substantially less than the 54.1% contractual site commission rate (line 12).
- Pay Now and Text2Connect accounted for only 16.9% of the inmate call minutes at the facility (line 29) but accounted for 41.9% of the provider call revenue generated at the facility (line 20).
- Unreported revenue was 72% of reported revenue (line 21)
- The effective rate for reported revenue at the jail (debit, prepaid, collect) was \$0.238/min (line 28).
 - We attribute this to the \$2.75 cap for local calls that the Commission approved in 2009 and the extremely high proportion of local calls to total calls. Along with elimination of the operator surcharge, this Order eliminates the cap on local call charges.
- The effective rate for unreported revenue at the jail (Pay Now and Text2Connect calls) was \$0.847/min (line 31), assuming the call allowance provided the customer with those calls is 15 minutes. Typically, single payment services provide a call allowance that is 15 minutes in duration, for one charge, regardless of whether the customer talks with the inmate for the allowed call duration. For single payment services provided from some facilities, the provider's call allowance may be as up to 20 minutes in duration.

⁵⁰ The provider sets a usage allowance for single payment service calls and the customer pays for the authorized call minutes regardless of whether the call extends to the maximum duration.

- 6.37 The site commissions at facilities served by providers that offer single payment services are actually much lower when unreported inmate call revenue is taken into account. Clearly, single payment services are a very large percentage of the total inmate call revenue generated at a facility where such calls are offered. When the average inmate call revenue for single payment services is \$0.85/min compared to \$0.24/min for inmate collect, debit, and prepaid service, there exists an incentive to conceal such revenue and shield it from regulation in the same manner other inmate calls are regulated. The minutes and revenue associated with inmate collect calls terminated on a wireline phone are reported to facilities. There is no plausible justification for providers to conceal the minutes and revenue associated with collect calls terminated on wireless phones.
- 6.38 CenturyLink correctly points out that the Commission reversed our initial proposal to eliminate such calls in our October 2013 Order for this proceeding. We also agree with CenturyLink that "...such a decision has the potential to completely undermine what the Further Order otherwise seeks to accomplish through its caps on rates and caps or prohibitions on other fees and surcharges." The Commission determined, however, that we should not prohibit options available to ICS customers for terminating collect calls to wireless phones provided those calls are priced in compliance with the rates and ancillary fees applicable to inmate collect calls to wireline phones. Beginning in ¶ 6.37 of our July Order, we establish a plan for pricing single payment services that ensures compliance with our caps on rates and ancillary fees. Inmate collect calls to wireline phones are priced at the capped collect call rate and may assessed the capped bill processing fee used to offset the wireline carrier (or third-party billing aggregator) charge for billing the call to the recipient's wireline account. ICS customers that pay for service using a debit or credit card are assessed the capped credit card payment fee. The Commission's cap for both the bill processing fee and the credit card payment fee is \$3.00.
- 6.39 The pricing plan calls for imputing a 12-minute maximum call allowance to single payment service calls. We derived the 12-minute allowance by subtracting the \$3.00 ancillary fee from the lowest priced single payment service offered by an ICS provider in Alabama—NCIC's \$5.99 charge for its Bill to Mobile offering. We concluded that the

\$2.99 remaining after subtracting the ancillary fee is the portion of the single payment service applicable to the charge for call usage. Dividing the targeted \$0.25/min collect call cap into the \$2.99 call usage charge yields a call duration of 12 minutes. The Commission notes that the average ICS call duration in Alabama during Calendar year 2012 is 10.4 minutes based on data submitted by the providers in response to our January 2013 data request. Therefore, the imputed call duration exceeds the average inmate call length and should be sufficient for most inmate collect calls. Our plan calls for pricing single payment services by applying the applicable capped collect rate to the 12-minute imputed call duration and adding to it the applicable ancillary fee. Single payment service calls priced in accordance with this plan are compliant with our caps on rates and ancillary fees.

- 6.40 In their comments, Securus claims the collect call cap for a 12-minute call allowance is lower than the cost that Securus must pay 3CI. However, neither Securus nor GTL have disclosed 3CI's charges despite ample opportunity to do so nor have they disclosed the portion of revenue they retain from single payment service charges. Until that data is disclosed, the claim is unsupported. NCIC charged \$5.99 for their Collect To Mobile single payment offering which is fully compliant with the Commission's rate and ancillary fee caps. Therefore, we conclude that Securus and GTL are capable of complying as well. For single payment services billed to the recipient's credit card (Securus' Pay Now and GTL's Collect2Card), we have heretofore stated that the use of a third-party provider to bill for such calls is unnecessary when the provider has the capability within its own call center to process credit card payments.
- 6.41 Securus asserts "...the Commission is attempting to interfere with the contracts of outside vendors like 3CI over which the Commission possesses no jurisdiction in much the same way as if the Commission sought to exercise jurisdiction over third-party computer companies, equipment suppliers, accounting firms or printing services which impact the cost of the ICS provided by Securus but over which the Commission has or exerts no jurisdiction.." We challenge Securus to identify any language in the Commission's July Order for this Docket or within this Order wherein we impose any requirements on 3CI.

Securus is free to subcontract the billing portion of its single payment services with 3CI or with any of 3CI's competitors but such contracts and the costs thereof are an economic decision for Securus in light of the maximum end user price the Commission authorizes for single payment services. Bill processing is but one component of fully regulated inmate calls and 3CI is not the ICS service provider nor can they be without a Certificate from the Commission granting them authority to provide ICS from Alabama confinement facilities. The Commission's authority over end user rates and charges for ICS is not supplanted simply because the provider elects to subcontract the bill processing portion of ICS collect calls to a non-regulated third-party vendor. The Commission notes that other utilities under our jurisdiction sometimes rely on third-party vendors for billing, facility construction, and for administrative support functions. Nevertheless, those utilities charge the rates approved by the Commission. As the provider holding a Certificate from this Commission granting it conditional authority to provide ICS in Alabama, Securus is obligated to ensure that the service is compliant with Commission rates, rules, and our orders.

- 6.42 While Securus and GTL challenge the Commission's jurisdiction to regulate the charges for single payment services in comments to our July Order, they acknowledge regulatory jurisdiction over the services in their Proposal to the FCC.

ICS providers would be permitted to impose fees for certain "premium" payment options, but such fees should be capped based on the ICS provider's existing fee amounts for such options for a period of three (3) years.⁵¹

The providers propose that the FCC cap interstate and intrastate single payment services while simultaneously contending that the intrastate regulator has no such jurisdiction. Such an argument is illogical and contradictory. Essentially, Securus is seeking complete autonomy with respect to the prices they charge wireless recipients of inmate collect calls in Alabama. Such abrogation of our regulatory obligation is tantamount to authorizing de facto circumvention of our approved rates and shields one segment of inmate calls from

⁵¹ Proposal, page 6.

regulated rates and fees that are otherwise applied to wireline collect calls and to wireline and wireless prepaid inmate calls. Ensuring end users are charged fair and reasonable ICS rates is a regulatory obligation regardless of whether the called party uses wireline or wireless technology. Therefore, we affirm our jurisdiction over ICS single payment services and cap single payment services in accordance with the pricing plan described beginning in ¶ 6.37 of our July Order for this proceeding.

6.43 ICS providers may petition for a waiver of the Commission's rate cap on the bill processing portion of the price for single payment services billed to the recipient's wireless account. We will entertain such petitions provided the following⁵² are fully disclosed:

1. End-to-end call handling procedures/call process flow for the single payment service;
2. A detailed description of the services performed by the third-party service for the ICS provider and the charge(s) associated therewith;
3. Description of any competitive pricing sought from other third-party billing services and the criteria used for selection of the third-party service used by the ICS provider;
4. Identification of any corporate/financial relationship between the third-party billing service and the ICS provider and/or the third-party billing service and the ICS provider's parent company or equity investors.
5. The proposed single payment service charge.

The petition for a waiver of the Commission's price cap is subject to our established procedures and available remedies including intervention, discovery, a public hearing, and refund obligations if the petition is subsequently denied in whole or in part. The petition for waiver must be filed with the Commission within thirty (30) days from the effective date for this Order. For inmate single payment collect calls billed to a wireless recipient's debit/credit card, we conclude that ICS providers have the capability within their own call center to process debit/credit card payments. Therefore, the Commission will not entertain a petition for waiver of our approved price cap for this single payment service.

⁵² The requirements listed herein supplant the waiver requirements in ¶ 6.40 of our July Order.

- 6.44 We hereby require all ICS providers offering single payment services to fully inform the called party of the prepaid service options available to them including the rates and payment fee associated therewith.⁵³ This information shall be included, up front, in the call processing script before single payment service options are disclosed. Call recipients shall, as a minimum, be provided an opportunity to establish a prepaid calling account with the provider, choose a single payment option, or reject the inmate collect call. Providers shall submit via email to the Commission, within 24 hours of our request, electronically recorded call scripts for all single payment services offered to collect call recipients from Alabama confinement facilities.

Restrictions on ICS Resale

Comments from Parties to the Proceeding

- CenturyLink:**
- 6.45 In the Further Order, the Commission attempts to prohibit the resale of ICS for inmate calling by penalizing ICS providers if the confinement facility decides to mark up inmate-paid prepaid services (often called "debit") sold through canteens or other channels. (§ 6.45). Century Link objects to this prohibition because neither the Commission nor the inmate providers have authority over the confinement facilities to enforce it. It is unreasonable of the Commission to penalize inmate payphone providers who have done nothing wrong, because of the actions of the confinement facility. Therefore, the Commission should reconsider and eliminate this requirement in the Order.⁵⁴

The Further Order establishes requirements and provisions for issuing replacement calling cards. (§ 6.48). CenturyLink objects to these requirements because prepaid cards can be used for improper purposes, such as bartering or gambling and for fraud. Typically, the facility defines the rules and regulations for calling card replacements, which is appropriate due to the potential security issues involved. The Commission should honor these valid concerns of the confinement facility and eliminate these proposed

⁵³ In this Order, the Commission eliminates minimum payment or deposit requirements. Therefore, the ICS provider will not require a minimum prepayment amount when informing the called party of their prepayment options.

⁵⁴ CenturyLink Comments, page 16.

regulations related to calling card replacement.⁵⁵

Securus:

6.46

In Section 6.45 of the Order, the Commission prohibits the resale of ICS by penalizing ICS providers if the confinement facilities mark up the price paid by the inmate such that the effective price for the ICS exceeds the maximum cap established by the Commission for debit calls. But ICS providers have no control, either physically or contractually, over the practices of confinement facilities. Nor does the Commission have jurisdiction or authority over the facilities. Because the Commission and the ICS providers lack authority over confinement facilities to enforce this policy, Securus objects to the prohibition and suggests that the Commission reconsider this prohibition.⁵⁶

Once Securus has sold the calling cards to the confinement facility, the facility exercises its discretion to determine how the calling cards are sold to the inmates although the confinement facility may not charge more than the face value of the calling card. In some cases, the confinement facility may have the correctional officers handle the sale to inmates. In other cases, the calling cards are sold through the commissary. Any replacement of lost or stolen cards or issuance of cash refunds of balances would need to be handled by the confinement facility or commissary that initially sold the card to the inmate. To do otherwise would be equivalent to the Commission imposing a refund requirement on convenience stores that sell long distance calling cards if such cards became lost or stolen.⁵⁷

Commission Response

6.47 The Commission Order imposes no penalties on ICS providers as CenturyLink claims.

Paragraph 6.45 in our July Order provides:

...the Commission exercises its jurisdiction to prohibit providers from offering ICS service to resellers that mark up the price paid by the inmate such that the effective price for the service exceeds the maximum cap authorized by the Commission for debit calls. ICS providers shall include on each prepaid inmate calling card the face value for ICS commensurate with Commission approved ICS rates.

⁵⁵ CenturyLink Comments, page 17.

⁵⁶ Securus Comments, pages 8-9.

⁵⁷ Securus Comments, page 9.

Providers shall not offer prepaid inmate calling cards for resale to any confinement facility or canteen/trust fund service that resells or is suspected of reselling the calling cards at a price greater than the face value listed thereon. Upon suspected violations, the Commission shall exercise its available remedies that include investigation of the reseller prices and suspension of ICS provider sales to the reseller. ICS providers shall establish new or amend existing agreements/contracts with resellers that include the above restrictions for resale of its ICS services and identify the Commission's remedies for suspected violations of the resale restrictions. The resale user agreement shall require the reseller to acknowledge by signature and date their understanding of the resale limitations and consequences for violations of the agreement. ICS providers shall provide a copy of the reseller user agreement upon Commission request.

- 6.48 We require ICS providers to redeem prepaid inmate calling cards for call minutes on the basis of the inmate's purchase price for the phone card divided by the Commission's approved rate cap for inmate debit calls (i.e., the retail or "face value"). We also require the ICS provider to permanently and prominently affix the face value to each prepaid inmate calling card before delivery to the reseller and ensure the reseller is fully informed that their sales price to the inmate shall not exceed the card's face value.
- 6.49 Many ICS providers sell prepaid inmate calling cards to confinement facilities for a price that includes an agreed upon discount on the retail value of the card. The usage associated with prepaid inmate calling cards resold by confinement facilities is excluded from monthly usage and revenue reports provided to the facility. Pay Tel, however, sells their prepaid calling card to the confinement facilities at face value and includes the minutes associated therewith in the monthly usage and revenue report upon which their normal facility site commissions are paid. Canteen service companies that resell the provider's prepaid calling card typically take payments from inmates for the cards via the kiosk dedicated to canteen service. Prepaid inmate calling cards are usually unnecessary at facilities wherein the ICS provider has installed their own payment kiosks dedicated to ICS service. Prior to routing the inmate payment for the calling card to the ICS provider, the canteen service company withholds an agreed upon percentage from the payment. The usage associated with prepaid calling cards sold by the canteen service company is